IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

CRP.No. 678 of 2001(A)

(I.A.NO.2248 OF 2000 IN O.S.NO.166/1995 of PRINCIPAL SUB COURT,ERNAKULAM)

REVN. PETITIONER/1ST RESPONDENT/PLAINTIFF:

M/S.MULAMOOTTIL CONSUMER CREDITS,
THIRUVANANTHAPURAM, WITH ITS BRANCH AT
2ND FLOOR, PAULSON BUILDINGS,
S. KALAMASSERY, REPRESENTED BY PARTNER,
SRI VIJAYAN EAPEN, RESIDING AT
BUILDING NO. XI/38, MULAMOOTTIL,
PADAMUGAL, KOCHI – 30.

BY ADV. SRI.P. JACOB VARGHESE

RESPONDENTS/PETITIONER & RESPONDENTS 2 TO 4 /DEFENDANTS:
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1. P.I. VARGHESE,
EMPLOYEE CODE NO. 172700, NAVAL AIR CRAFT YARD,
KOCHI.

2. K.K. PRABHAKARAN,
ID CARD NO. 254539, NAVAL AIR CRAFT YARD,
KOCHI – 4.

3. K. BALAGOPALAN,
EMPLOYEE CODE NO. 102300,
-DO- -DO-

4. V. JAYAPRAKASH,
CHINGELIPOTTAKAT HOUSE,
KARATHUPALLIKARA, PERUMBAVOOR-683542.

BY ADV. SRI.BALAKRISHNAN GOPINATH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/11/2007, ALONG WITH CRP NOS. 1372 OF 2001 AND 1375 OF 2001, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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C.R.P. Nos. 678 , 1372 & 1375 OF 2001

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Dated this the 26th November , 2007

O R D E R

The revision petitioner in these revisions is the plaintiff in O.S.No. 166 of 1995 on the file of the court of the Prl. Sub Judge, Ernakulam. The suit was filed for realisation of money on the basis of a hire purchase agreement. The defendants were ex parte. The court below decreed the suit ex parte on 20.11.1998. The 4th defendant P.I. Varghese filed I.A.NO. 2248 of 2000 under Order IX Rule 13 of the Code of Civil Procedure to set aside the ex parte decree. There was a delay of 531 days in filing the application . The petitioner in the application, viz., 4th defendant contended that he was undergoing treatment for mental illness and he could not contact the counsel for the conduct of the case. On coming to know of the ex parte decree on 25.08. 2000, an application was filed to set aside the ex parte decree . The court below considered the facts and circumstances of the case and condoned the delay and allowed the application to set aside the ex parte decree on payment of Rs. 1000/- to the plaintiff. The order in I.A.No. 2248 of 2000 is under challenge in C.R.P.No. 678 of 2001.

2. The court below took note of the fact that the 4th defendant was undergoing treatment for mental illness and that he was prevented by sufficient cause from appearing when the suit was taken up. In the facts and

circumstances of the case, the court below exercised discretion in favour of the 4th defendant and condoned the delay in filing the application for setting aside the ex parte decree . The application to set aside the ex parte decree was also allowed on payment of cost of Rs. 1000/-. In a revision under section 115 of the Code of Civil Procedure, normally the revisional court would not interfere with the finding of facts arrived at by the court below and the discretion exercised by the court below. No grounds are made out for invoking jurisdiction under section 115 of the Code of Civil Procedure.

3. C.R.P. 1372 and 1375 of 2001 arise out of the applications filed by the third defendant, V. Jayaprakash to set aside the ex parte decree and to condone the delay in filing the application for setting aside the ex parte decree. The court below condoned the delay and set aside the ex parte decree on payment of cost . The cost was deposited by the third defendant. I am of the view that the court below was justified in allowing the application to set aside the ex parte decree and that no interference is called for.

4. Accordingly C.R.P. Nos. 1372 and 1375 of 2001 are also liable to be dismissed. It is also to be noted that those revisions were admitted on 19.06.2001 . The respondents were not served with notice since steps for service was not completed due to the default of the petitioner. Since C.R.P.No. 678 of 2001 is dismissed and the ex parte decree is set aside against the 4th defendant, I do not think that notice need be issued to the respondents in C.R.P.Nos.1372 and 1375 of 2001 which are also liable to be dismissed.

Accordingly all the Civil Revision Petitions are dismissed. Pending Civil Miscellaneous Petitions are also disposed of. C.M.P. No. 1496 of 2001 in C.R.P.678 of 2001, C.M.P.No.3122 of 2001 in C.R.P. No.1372 of 2001 and C.M.P.No. 3130 of 2001 in C.R.P.No. 1375 of 2001 are also dismissed. No order as to costs.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. Nos. 678, 1372 &
1375 of 2001

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Dated this the 26th November, 2007

O R D E R